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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,322	07/03/2003	H. Joshua Schreff	89287.0002	4235

7590                    11/17/2004

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[REDACTED] EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
	3749

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,322	SCHREFF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 July 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 37-54 and 56-68 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 37-50,52,53,56-60 and 63-68 is/are rejected.  
 7) Claim(s) 51,61 and 62 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I (claims 1-54 and 56-68) in the reply filed on 10/12/2004 is acknowledged.

***Response to Amendment***

2. Receipt of applicant's amendment is acknowledged. In this amendment applicant has cancelled claims 1-36, 55, and 69-72 and amended claims 37 and 51.

***Drawings***

3. The drawings filed on 7/03/2003 are accepted by the examiner.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 52 and 53 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 52 and 53 each recite the limitation "the steam condenser." There is insufficient antecedent basis for this limitation in the claim. Applicant amended the independent claim to remove the limitation of a steam condenser from the independent claim 37. The steam condenser

is not introduced in claim 51. It appears applicant intended to make claims 52 and 53 dependent on claim 51 and has been regarded as such for the purpose of an examination on the merits. Correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 37, 38, 40-42, 44, 46-48, 54, 56-58, 59, and 63-68 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,793,323 to Guida et al. (“Guida”).

Guida discloses in Figures 1-14 the invention as described in applicant’s claims 37, 38, 40-42, 44, 46-48, 54, 56, 58, 59, and 63-68. In particular, Guida discloses a self-contained temperature-change container assembly and method including an inner metallic container (3), a jacket top ring (see Fig. 5), a jacket body (4), a flexible jacket bottom (12), a metal reagent separator (6) (see col. 5, line 6), first and second temperature reagents in compartments (see col. 5, lines 3-5) that may be calcium oxide and water in either compartment (see col. 6, lines 61-68), a plurality of penetrators (10) including at least three (see fig. 7b), wherein the bottom is flexed so that the penetrates pass through the reagent separator (see col. 5, lines 33-49). Thermic welding is used to attach the jacket body and jacket ring (see col. 5, lines 26-28) and is also broadly considered an adhesive.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 39, 43, 45, 49, 50, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guida as applied to the claims above.

In regard to claims 39 and 60, Guida clearly shows that the jacket body and jacket top ring are securely attached to one another. To have formed these integral with one another as a single piece would be simply a matter of design choice absent the showing of some new or unexpected results over the prior art of record.

In regard to claim 43, OFFICIAL NOTICE is taken that self-heating containers initiating an exothermic reaction may be employed as self-cooling containers initiating an endothermic reaction simply by substituting reagents that are known to produce an endothermic reaction.

In regard to claim 45, to have selected plastic for the thin metal foil of the reagent separator in Guida would have been obvious to a person of ordinary skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use and is an obvious matter of design choice. See In Re Leshin, 125 USPQ 416.

In regard to claims 49 and 50, Guida discloses that the penetrating member (10) may include one or more stems (see col. 5, lines 32) and illustrates by way of example 4 penetrators (see Fig. 7b). To have selected five or nine penetrators as recited in applicant's claims would be simply a matter of optimizing the number of penetrators in Guida, which would be obtainable through routine experimentation and is not regarded as patentably distinct. See MPEP § 2144.05(II)(A).

#### *Allowable Subject Matter*

11. Claim 51, 61, and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 52 and 53 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

13. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents to Murman, Gottfurcht, Sato, Scudder et al., and Japanese Patent No. 4-54922 are included to further show the state of the art concerning temperature change containers.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
November 15, 2004

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749